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LAW OFFICES
HALEY, BADER & POTTS
4350 NORTH FAIRFAX DR., SUITE 900
ARLINGTON, VIRGINIA 22203-1633
TELEPHONE (703) 841-0606
FAX (703) 841-2345

POST OFFICE BOX 19006
WASHINGTON, D.C. 20036-9006
TELEPHONE
(202) 331-0606

MELODIE A. VIRTUE

March 16, 1993

OUR FILE NO.
1108-101-63

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: CC Docket No. 92-297
RM-7872; RM-7722

Dear Ms. Searcy:

Transmitted herewith are an original and nine copies of **Comments of Eagle Engineering & Communications Group, Inc.** in the above-referenced proceedings.

Should further information be desired regarding this filing, please communicate directly with this office.

Very truly yours,

Melodie A. Virtue

Enclosures (10)
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List A B C D E

Before The

Federal Communications Commission

Washington, D.C. 20554

In The Matter Of	)	
	)	
Rulemaking to Amend Part 1 and	)	CC Docket No. 92-297
Part 21 of the Commission's Rules	)	
to Redesignate the 27.5 - 29.5 GHz	)	RM-7872; RM-7722
Frequency Band and to	)	
Establish Rules and Policies for	)	
Local Multipoint Distribution Service	)	

TO: The Commission

COMMENTS OF EAGLE ENGINEERING & COMMUNICATIONS GROUP, INC.

The Eagle Engineering & Communications Group, Inc., by counsel, hereby supports the Commission's proposal to allocate 27.5 to 29.5 GHz Frequency Band ("28 GHz Band") to Local Multipoint Distribution Service ("LMDS").

Introduction

Eagle Engineering & Communications Group, Inc. ("Eagle"), is a consulting firm which advises clients in the business development of new technology services. The company is particularly interested in interactive television and wireless cable and views LMDS as an opportunity to provide two-way, interactive communications combined with video programming.

The Commission's *Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration* ("*NPRM*"), released January 8,

1993, FCC 92-538, proposes to allocate the 28 GHz Band for use by new LMDS services. LMDS would allow an operator to offer a minimum of 49 video programming channels and other telecommunications services, such as two-way voice and data, in the vertical and horizontal polarization planes in each cell. This hybrid of wireless cable and cellular technology is based on the proposal of Suite 12, which developed CellularVision technology -- a "multicell configuration distribution system with return path capability."[1] CellularVision technology has been used on an experimental basis in the New York City metropolitan area. Through this rulemaking proceeding, the Commission seeks public comment on its proposed regulations governing the implementation and operation of LMDS systems.

Structure and Technical Regulation of 28 GHz Band

The FCC envisions two operators licensed to the 487 "Basic Trading Areas" identified in the Rand McNally *1992 Commercial Atlas and Marketing Guide*, plus Alaska and Puerto Rico. Each operator would be licensed to use 1,000 MHz each. *NPRM* ¶¶ 20, 30. Eagle supports the Commission's proposal for no more than two providers per market area. Licensing any more that two providers per market would doom LMDS to failure given the risk of starting up a new service along with the existing competition from cable systems, MMDS, cellular telephony, telephone companies, television and low power television stations and the eventual competition from DBS and IVDS which will have a head start.

[1] Petition for Rulemaking filed by Suite 12, September 23, 1991, at 3.

For purposes of initial licensing, the FCC plans to adopt a 20 MHz channel plan within the 1000 MHz of spectrum available to each operator. *NPRM* ¶ 23. Thereafter, the licensee would be able to determine its own mix of channel bandwidths to accommodate traffic needs on a cell-by-cell basis. Allowing the licensee the flexibility to establish specific bandwidth and emission characteristics after the initial license is granted will permit the licensee to tailor LMDS services to specific needs and service demands of consumers in particular cells. The only need for regulation would be the FCC's proposal to ensure coordination of services and control of interference at the interfaces of LMDS systems.

Regulatory/Licensing Issues

Licensee Status. Eagle believes that the Commission should regulate LMDS as a non-common carrier service. *See NPRM* ¶ 26. As initial demand for LMDS will likely be for video programming, many of the LMDS channels may be dedicated to video programming and it may not be economically feasible to offer non-discriminatory access to all of the public to the non-video channel services. Depending on the mix of programming or two-way communications provided in any given cell, channel capacity may be limited. The licensee should be able to choose what types of service to offer to the public in specific areas based on market demands when needed without regulatory restrictions. For instance, the LMDS system cell(s) serving a school zone could offer additional channels for two-way educational programming. Extra channels in cells serving a business district, however, may be better

utilized for videoconferencing. The operator should be permitted to determine what services to provide to which cells and channels and on what basis. Further, as neighborhoods or business districts within an LMDS service area grow, or decline, the LMDS operator will need the flexibility to alter the mix of services within any given cells as the need for differing services changes. Thus, operators should not be compelled to provide services indifferently to the public but, rather, be afforded the flexibility to adapt to market changes.

Service to Minimum Areas. Eagle approves of the FCC's proposal to require an LMDS licensee to be able to serve 90% of the population within three years of obtaining a license. *NPRM* ¶ 32. The proposal puts applicants on notice that only applicants serious about serving the area need to apply. The proposed rule would also encourage the introduction of service as soon as possible.

Selection Process. In the interest of making LMDS available as quickly as possible, Eagle favors the FCC's proposal to use random selection through a lottery. *See NPRM* ¶ 35. Pursuing competitive bidding, even with Congressional authorization, would virtually restrict ownership of LMDS to the established, well-heeled telecommunications and cable companies without encouraging diversity of ownership of a medium of mass communications. Competitive bidding would also inflate the start-up costs for this new service, which will be a risky venture given the plethora of existing services already available. To the extent that LMDS will provide innovative service, the venture is also fraught with risk owing to the need to create a demand for the new service. Costs incurred will be passed on to consumers, thereby

restricting the demand for service and, concomitantly, adversely affecting the potential success of LMDS. The effect of competitive bidding would be particularly detrimental to those companies seeking to provide two-way educational services. As a result, the Commission should not adopt a selection process that would exclude services and programming that provide a great deal of public service but for which a limited amount of funds may be available.

Transfer of Control and Assignments. In order to reduce the number of speculators applying for LMDS applications, Eagle agrees with the FCC's proposal to limit a permittee's ability to transfer or assign the license until the system has been constructed (*NPRM* ¶ 39), unless extraordinary circumstances warrant a waiver of the Commission's rule. Perhaps limiting the amount the permittee could receive for an unbuilt or partially completed system to actual costs, similar to the FCC's provisions for unbuilt broadcast construction permits in Rule 73.3597, would satisfy the FCC's concern that only sincere applicants apply.

License Term and Renewal Expectancy. The Commission plans to propose a five-year license term, although it seeks comments on whether a ten year term would be more appropriate. *NPRM* ¶ 40. Eagle submits that the FCC should adopt a ten year term with a renewal expectancy. The effort and expenditure it will take to serve 90% of the population in the geographic expanse of a Basic Trading Area warrant a ten year license term and renewal expectancy. Numerous cells will be required to cover the service area because the cells using 28 GHz band

frequencies will have a limited radius of six to twelve miles.[2] Additional reflectors and repeaters will also need to be erected to achieve line of site coverage to the consumer's transceivers.[3] A five year term without renewal expectancy acts as a disincentive for an operator to invest in an LMDS system. A ten year term would better enable an operator to recoup its investment and still price the service at a cost attractive to consumers.

Application Requirements. The Commission has proposed using a "letter perfect" standard for LMDS applications but also solicited comments on a "post-card" application. *NPRM* ¶¶ 42-44. If a "post-card" application process were implemented, the FCC would thereafter require the lottery winner to file a detailed "letter perfect" application within 30 days. Eagle favors the Commission's plan to require "letter perfect" applications in a short filing window and strongly opposes the Commission's alternative proposal to allow "post-card" applications followed by a "letter perfect" application within 30 days. Post-card application procedures attract application mills and open the process up to abuse by scam applicants. Historically, such procedures have been abused when utilized by the FCC as well as by other agencies, such as in the oil and gas lease area. The 30-day filing period to perfect the post-card winners' proposal also adds unnecessary delay and offers protection to sham applicants. Strict filing requirements, however, will limit

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[2] Petition for Rulemaking filed by Suite 12, September 23, 1991, at 5.

[3] *Id.* at 6.

applicants to those who are truly serious about constructing and operating LMDS systems.

Conclusion

With the relative disuse the 28 GHz Band has experienced, and the demand for that spectrum by multichannel video and telecommunications services, re-allocation of the 28 GHz Band for LMDS service is appropriate. Implementation of LMDS service in this fallow area of the spectrum would serve the public interest by providing the public with additional, competitive video and telecommunications services. Eagle supports the use of this spectrum for LMDS.

Respectfully submitted,

EAGLE ENGINEERING & COMMUNICATIONS GROUP, INC.

By _____
Melodie A. Virtue

Its Attorney

HALEY, BADER & POTTS
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606

March 16, 1993